

**HEADING OF A DECISION IN A CIVIL SUIT  
IN THE COURT OF THE CIVIL JUDGE (JR. DIVN.), KHURDA**

PRESENT :-

Sri Abhilash Senapati, LL.B  
Civil Judge (Jr. Divn.), Khurda.

***Dated the 09<sup>th</sup> day of September, 2014***

**C.S. 54/ 2012.**

Choudhury Deepak Patasahani, aged about 29 yrs, Natural son of Madhusudan Routary, adopted son of Sarbeswar Sundaray of Vill./P.O.- Gurujanga, P.S./Dist- Khordha.

..... Plaintiff.

-Versus-

1. Sarbeswar Sundaray, aged about 78 yrs, S/o- Madhusudan Sundaray.
2. Pramila Sundaray, aged about 70 yrs, W/o- Sarbeswar Sundaray both are of Vill./P.O.- Gurujanga, P.S./Dist- Khordha.
3. Swapna Rani Khatei, aged about 49 yrs, W/o- Ashok Kumar Khatei  
of Vill./P.O.- Pubusahi, P.S./Dist- Khordha.
4. Sanjukta Pradhan, aged about 35 yrs, W/o- Pradeep Kumar Pradhan,  
Vill./P.O.- Kantalabai, P.S.- Tangi, Dist- Khordha.
5. Sasmita Sundaray, aged about 30 yrs, W/o- Sukanta Kumar Sahoo,

At- Talasahi, P.O./P.S.- Khordha Town, Dist- Khordha.

..... Defendants.

6. Madhusudan Routray, aged about 61 yrs, S/o- Haribandhu Routray.

7. Jyotsna Rani Routray, aged about 51 yrs, W/o- Madhusudan Routray.

Both are residing at Vill./P.O.- Puincha, P.S.- Baideswar, Dist- Khordha.

..... Prof. Defendants.

Counsel for Plaintiffs	...	Sri P. K. Mishra, Advocate & Associates.
Counsel for defendant	...	Sri A.K. Pattnaik , Advocate & Associates.

.....  
Date of Argument – 01.09.2014

Date of Judgment – 09.09.2014  
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### **JUDGEMENT**

1. The plaintiff has filed this suit with a prayer for declaring that he is the only adopted son of defendant Nos. 1 & 2 and a further declaration that the sale deeds executed in favour of defendant Nos. 3 to 5 are sham, void and that defendant Nos. 3 to 5 to be permanently enjoined from entering or interfering in the possession of the plaintiff in respect of the suit properties.

02. The plaintiffs case in a nutshell is that :-

He is the natural son of proforma defendant Nos. 6 & 7. The defendant Nos. 1 & 2 are the parents of defendant Nos. 3 to 5. Defendant Nos. 1 & 2 have four daughters and their only male child has expired since childhood. The defendant No. 7 is the oldest daughter of defendant Nos. 1 & 2. The plaintiff is the second son of his natural parents and his date of birth is 24.05.1983. In the year 1990 the defendant Nos. 1 & 2 requested the parents of the plaintiff to take adoption of the plaintiff since there is no male child to keep alive their family and the parents of the plaintiff, i.e. proforma defendant Nos. 6 & 7, keeping the request of defendant Nos. 1 & 2, gave adoption of their child in a function on "DOLAPURNIMA" during 1990 performing "PUTRESTAJAGNYA" in presence of family members and neighbors and "KULA PUROHITA". After performance of the required rituals the name of the plaintiff was changed and he was called as Choudhury Deepak Pathasani. The plaintiff was adopted as the only son of defendant Nos. 1 & 2. The defendant Nos. 1 & 2 executed a registered deed acknowledging the plaintiff as their adopted son. A valid adoption deed No. 69 dt. 08.12.2004 in which the four daughters of them also had signed as a token of their consent, to the adoption along with the natural father of the plaintiff. The defendant Nos. 3 to 5 & 7 also executed another registered deed of relinquishment of their share in favour of the plaintiff vide deed No. 2683 dt. 08.12.2003 in respect of the ancestral properties situated at mouza Gurujanga and extending to an area of Ac. 1.542 decimals. The plaintiff was procuring his education at Gurujanga and all along was staying with his adoptive parents. The plaintiff completed his

graduation in the year 2003. Further more the above mentioned deed is not a fraudulent document as the defendant No. 1 had given some condition on the plaintiff that he was to observe all the obsequies of defendant Nos. 1 & 2. The plaintiff after completion of his graduation continued and stayed at Gurujanga as the adopted son of defendant Nos. 1 & 2 and actively managed the family affairs, such as the marriage of the youngest daughter and the cultivation of the lands of defendant No. 1. Prior to the adoption of the plaintiff, the defendant No. 1 had got the landed properties through the registered partitioned deed vide No. 817 dt. 22.02.1983, which is their ancestral properties and was in possession over the same exclusively. After the deed of acknowledgment of adoption executed on 08.12.2004, the defendant No. 1 managed to execute a registered sale deed in her favour vide RSD No. 69 dt. 06.02.2008 in a tainted manner without the knowledge of the plaintiff. The defendant Nos. 3 to 5, i.e. the daughters of defendant Nos. 1 & 2 made a conspiracy and wanted to oust the plaintiff and in absence of the plaintiff, when he had gone to Hyderabad to prosecute his education in computer science in the month of June, 2009. After completion of his computer education the plaintiff also got a job and used to stay there from October, 2010. The defendant No. 1 under the ill advice of defendant Nos. 3 to 5 executed the sale deeds on 01.10.2011 vide RSD No. 11141105424 to 11141105428 in favour of Sanjukta Pradhan, Sasmita Sundaray, Swapnarani sundaray in respect of the suit property with the ulterior motive to debar the plaintiff to enjoy the property as the adopted son of the family in future. The above transactions were never acted upon and no consideration money was paid and in fact no delivery of possession

was given to the vendees. The same is also not binding to the interest and possession of the plaintiff in any manner whatsoever. When the plaintiff got to know about the said execution of the sale deeds he inquired from the defendants about the said transaction, but neither the defendant Nos. 1 & 2 nor defendant Nos. 3 to 5 gave any answer relating to the intention of such execution of sale deed. Even the defendant Nos. 6 & 7 could not assign any reason in such behaviors of defendant Nos. 1 to 5. The cause of action for the suit arose on 08.12.2004 when deed No. 69 & deed No. 2683 was executed and on 16.02.2008, when sale deed No. 69 was executed and again on 01.10.2011 when the registered sale deed Nos. 11141105424, 11141105425, 11141105426, 11141105427, 11141105428 executed in favour of Sanjukta, Sasmita, Swapnarani with ulterior motive to debar the plaintiff was executed. Hence the plaintiff has prayed for making a declaration against defendant Nos. 3 to 5 declaring their sale deeds as void, further declaring him as the only adopted son of defendant Nos. 1 & 2 and permanently injunctioning defendant Nos. 3 to 5 from interfering in the possession of the plaintiff in respect of such suit properties.

03. Defendant Nos. 1 to 5 have filed their written statement stating therein that the suit is liable to be dismissed due to lack of cause of action. Defendant Nos. 1 & 2 had never requested the parents of the plaintiff to adopt him as their son. The defendant Nos. 1 & 2 had never executed any deed of acknowledgment about the adoption of the plaintiff as no adoption was ever made. Rather the plaintiff and his parents, i.e. proforma defendant Nos. 6 & 7 requested to take some

loan on the consent of the defendants and out of the relationship defendant No. 1 accepted to their proposal. If any such document has been ever made then the same is fraudulent in nature and is not binding upon them. The plaintiff completed his education at Gurujanga and thereafter has been staying with his natural parents and keeps no relation with the defendants, but only to grab the property has filed such a suit with imaginary facts. The defendant Nos. 3 to 5 have never executed any deed of relinquishment in favour of any body. The plaintiff while prosecuting his study at Gurujanga had good relationship with his parents as they gave him admission and after completion of graduation , for higher study, loan was required and the plaintiff and proforma defendants approached them to execute document and with good faith they signed on all the documents. Never was the plaintiff kept in charge of the properties of defendant No. 1. The health of defendant No. 3 is at a very bad condition for which, defendant No. 1 being in acute need of money approached his daughters to give financial assistance and for that as per their respective final assistance the defendant No. 1 executed the deeds in their favour, thereby taking the consideration and delivered them possession. As already been discussed, the plaintiff is not the adopted son hence he has no claims over the property of defendant No. 1.

04. The defendant Nos. 6 & 7 have appeared and have filed their written statement stating therein that the defendant Nos. 1 & 2 had no male child. Hence defendant Nos. 1 & 2 have approached them to given their child on adoption to them. Since the date of adoption, the plaintiff continues as the son of his adopted parents and lost all his

rights from the defendants. The above said adoption was valid and accordingly acted upon. The plaintiff also performed all his social functions of his adopted family and adoptive parents and obsequies. In that view it is false to say that defendant Nos. 1 & 2 never executed any deed of acknowledgement of adoption about the adoption of the plaintiff as no adoption was ever made. It is false to say that defendant Nos. 3 to 5 have signed documents as per the instruction of defendant Nos. 1, with an intention to facilitate the plaintiff some loan for his higher study. The defendant No. 7 also was a signatory of the deed of relinquishment executed in favour of the plaintiff. The plaintiff continued to stay at Gurujanga after completion of his graduation in the year 2003 and actively managed the family of his adoptive parents and marriage of the daughter of defendant No. 1 & 2. In fact when the plaintiff was seven years old he was adopted by defendant Nos. 1 & 2. The second daughter namely Sushama of defendant No. 1 & 2 was a heart patient, who expired in the year 1996 and the plaintiff also performed all her obsequies rituals as the only son of defendant Nos. 1 & 2. After her death the entire family was suffering from mental depression caused by the loss of Sushama and thereafter the plaintiff was only hope of the defendants. The defendant Nos. 1 had executed the registered sale deeds in favour of defendant Nos. 3 to 5 being ill motivated by them.

5. Taking into account the rival pleadings of both the sides, the following few issues have been framed in this case for adjudication of the real dispute between the parties.

**ISSUES:-**

- i. Whether the plaintiff has any cause of action to file the suit?
- ii. Whether the suit is maintainable according to law?
- iii. Whether the plaintiff is the adopted son of defendant Nos. 1& 2?
- iv. Whether the deed of relinquishment has been validly executed ?
- v. Whether the sale deeds executed in favour of defendant Nos. 3 to 5 are sham, void and not binding upon the plaintiff?
- vi. To what other reliefs, the plaintiff is entitled?

06. In order to prove its case the plaintiff has examined four witnesses and has exhibited 13 documents, which includes affidavit evidence of P.W. 1, 2, 3 & 4 as Ext. 1, 11, 12 & 13 respectively Ext. 2 & 3 are the registered sale deeds of acknowledgment and relinquishment respectively. Ext. 4, 5, 6, 7, 8 & 9 are registered sale deed Nos. 69, 11141105424, 11141105425, 11141105426, 11141105427, 11141105428, Ext. 10 is the certified copy of the registered partition deed bearing No. 817.

While on the other hand to disprove the averments of the plaintiffs the defendants have adduced four witnesses and have exhibited two documents which includes the voter list of the plaintiff.

**FINDINGS****Issue Nos. iii. &iv**

06. As these issues are the most important issues and are

inter-linked hence it is discussed at first. Let us analyze the evidence in the light of the above issues P.W. 1 in para – 14 of his evidence has stated that he has never taken any step after 1990, when he was adopted by defendant No. 1 to make any changes in the educational and other records regarding the names of his parents. He had attained maturity and intelligence by the time he was in class – 10. Even at the time of filling of form of HSC examination he had not taken any steps for mentioning the names of his adoptive parents in place of his natural parents. There is no document of the period prior to 2004 where, he was described as the son of defendant No. 1. Defendant No. 1 & 2 are his natural maternal grand parents. In para - 18 he has stated that he had not consulted his natural parents before filing this case. He had also never discussed about this case in detail with them after its filing. In para – 21 he has stated that prior to 15 days of the actual date of adoption ceremony he came to know about the proposed adoption. In para – 22 he states that the rituals for the purpose of adoption on the date of adoption continued for about an hour. At that time his natural parents, defendant No. 1, his brother, his brother in law, priest and barber and some villagers were also present. One Panu Mishra, who was the priest and Agadhu Barik as the barber had performed rituals in his adoption ceremony. The above said rituals were performed in the entrance room of the house of the defendant No. 1. He could not say as to who had fixed the date and time of the said adoption. At around 12 in the noon the rituals began. There was a “HOMA” in the said ceremony. His natural father and adoptive father then had taken oath and finally his adoptive father then asked him for adoption and his natural father agreed to such adoption. His natural father literally gave

him in the hands of his adoptive father. He later got to know the actual name of the "HOMA". In para – 23, he states that in the voter list the name of his natural father has been shown as his father. In para – 30 he states that his natural parents have never borne any expenditure for his education. In fact defendant No. 1 bears all his expenditure. In para – 33 he states that he had asked the defendant No. 1 as to why he has mentioned in such written statement that he never adopted him, where as his adoptive father restrained him from asking any such question. His natural mother is now residing with defendant No. 1. P.W. 2, who is the deed writer had scribed the deed for acknowledgment and had in his cross-examination stated that the said deed was scribed by him. In para – 10, he states that the stamp paper in which Ext. 3 was scribed was purchased by the natural mother of the plaintiff. No such endorsement regarding existence of the relinquishment is present in Ext. 3. Ext. 3 was executed in favour of the plaintiff. Patita Pabana Gajendra, who was a witness to Ext. 3 is also a license deed writer. He had scribed both Ext. 2 & 3. P.W. 3 has in his cross-examination stated that he could not say the GOTRA of Sarbeswar Sundaray or the plaintiff. Village Puinchha situates at a distance of around 3 K.M. from his house. He has got no blood relation with Sarbeswar. He had attended the adoption ceremony of the plaintiff, which was held on the day of DOLA PURNIMA. The said adoption was around 20 years ago. A PANDLE was constructed in the drawing room of Sarbeswar for the adoption ceremony. P.W. 4 has in his evidence stated that he knows both the parties and has in his cross-examination stated that he has not seen the adoption ceremony of Deepak. His friend Deepak has filed this case against his adoptive father, who in his absence, had given all

his properties to his daughters. The plaintiff had asked him to depose as a witness in this case.

D.W. 1, who is the natural father of the plaintiff has in his cross-examination stated that the plaintiff has got no share in his property as he has been adopted by defendant No. 1. In his further cross-examination he stated that he has read entire Ext. A, i.e. his evidence. In all the certificates of the plaintiff he has been shown as the father of plaintiff. He is a resident of village Puinchha, who comes under the sub-Division, Banki. In their village, the plaintiff is the only person having name of Choudhury Deepak Kumar Patasahani. Choudhury Latak Kumar Patasahani and Chinmaya Routaray are his two other sons. He could not say as to how Deepak's name got listed therein. He has got good and cordial relationship with all the defendants. He has never questioned the defendants as to why they denied the execution of the said adoption deed. As this was an internal matter of their family, he did not think it proper to interfere and accordingly he had not asked them the reason for their denial. After receipt of summons he inquired about the matter to the plaintiff over phone. His wife resides with him. The partition of property within their family has not taken place. No such deed of adoption relating to such adoption had been executed in the year, when the rituals for adoption had taken place. His family priest and barber had not taken part in the adoption. From their side he, his wife and the plaintiff were present in the ceremony. My mother in law was bed ridden for around 6 months before her death. D.W. 2 has in his cross-examination stated that his signatures are present in Ext. 2 marked as Ext. 2/2 to 2/18. She stated that she had signed on the same without knowing about the contents

thereof. She could not say as to when the plaintiff completed his graduation. In para – 12 he states that the plaintiff is the natural son of his eldest daughter. He was pursuing his education during his childhood and at their place as there was no scope of education in his parental village. His youngest daughter married in 2004-05. He had executed a registered sale deed in favour of the daughter Sanjukta in respect of some of his properties. He had also invited the mother of the plaintiff to come for selling his property. In para – 15 he has stated that all the properties, which fell in his share vide partition deed No. 817 dt. 22.02.1983, were his joint family property. Around 2 to 4 years back, the plaintiff had left their house. The plaintiff never takes care of them. D.W. 3 has in her cross-examination corroborated the evidence of the defendants and has stated that she could not say the khata and plot number and area of the lands mentioned in registered deed. She also could not say the other landed properties recorded in the name of her sisters. She has denied that since primary to graduation Deepak had stayed in his father's house at Gurujanga and that till joining his job he performed his duties as a son for his father, for which on 08.12.2004, they had made a deed of relinquishment in favour of Deepak. In para – 9 she states that she had given her signature before a deed writer as per the direction of her father to apply loan. D.W. 4 has in his evidence in his cross-examination stated that Sarbeswar has four daughters, but he could not say the names of all of them. Deepak Patasahani was residing in Gurujanga. He does not know the father's name of the plaintiff. He has written in his affidavit that Sarbeswar is not the son of Deepak. He does not know about the suit properties involved and the documents thereof. Sarbeswar has no male child. Mantu the son of Swapna had

performed all the rituals of the death ceremony of wife of Sarbeswar.

Coming into the question of adoption, the two most essential things which needs to be proved are :-

- (a) The ceremony of giving and taking
- (b) Dutta Homa.

Before 1956, the above two ceremonies were considered to be necessary, but as per proviso to Sec. 11 (6) and **Dhani Bhoi vrs. Need 1972 Rajasthan (9)**, It has been held that DUTTA MOHA is not longer a necessary ceremony. In this case it is the case of the plaintiff that the said transaction of giving and taking was done when he was a minor and that no such adoption deed was made at that time. However, a deed acknowledging the adoption was done in the year 2004. Sec. 6 of Hindu Marriage and adoption Act states about the valid requisites of an adoption.

08. As per **Sec. 6 of Hindu Marriage and Adoption Act** “*No adoption shall valid unless :-*

1. *The present adopting has the capacity and also the right to take an adoption.*
2. *The person giving in adoption has the capacity to do so.*
3. *The person adopted is being capable for taking in adoption.*
4. *The adoption is made in compliance with the other condition mentioned in this chapter.*

**Sec. 7** states that “*any male Hindu, who has a sound mind and is not a minor has the capacity to take her son or a daughter in adoption*”.

**Sec. 10** states that “who are the person, who may be adopted no person shall be capable for being taken any adoption unless the following conditions are fulfilled namely :-

1. *He/ she is a Hindu.*
2. *He/ she has not already been adopted.*
3. *He/ she has not been married.*
4. *He/ she has not completed the age of 15 years.*

**Sec. 11** states that “*the other conditions for valid adoption:-*

1. *If the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, sons son or sons sons son, leaving at the time of adoption.*

09. Coming into the question of giving and taking ceremony it is seen that the evidence of P.W. 1 in para – 22, wherein he has clearly stated that the rituals for the purpose of adoption continued for about an hour. He has also stated that his adoptive father asked him in adoption and his natural father literally gave him in the hands of his adoptive father. The scribe of Ext. 2, i.e. adoption deed also has clearly stated about Ext. 2 being scribed in his presence. P.W. 3 has also in his evidence corroborated the said aspect. D.W. 1 has in para – 8 of his evidence stated that the plaintiff has got no share in his property as he has not been adopted by defendant No. 1. The evidence of D.W. 1 clearly corroborates Sec. 12 of the Hindu Adoption and Maintenance Act. Coming into the argument placed by the defendants it is seen that the defendant has clearly stated that the said adoption is not a valid adoption, basically on the following grounds, firstly the

plaintiff was never adopted and that till now he staying with his parents. The defendants have also alleged about the name of the plaintiff finding place in the voter i.d. Card of village Painchhua showing his fathers name as his natural father. Further more no examination of the priest and barber casts a further grievous doubt on the adoption.

The defendant has filed a citation in *AIR 2003 SC 1428*, wherein it has been held that “adoptive son describing himself as son of his natural father in maintenance proceeding filed by his wife, ceremonies performed not noted in the deed, further recording in a will that the said will has been written in favour of his adopted son so that it may be used at time of need – considering the circumstances and class and the deed and will rejection of claim of adoption proper”.

In *2014 (II) OLR 221* it was held that giving and receiving are absolutely necessary to validate an adoption and they are the operating part of the ceremony, i.e. bringing the boy from one family to another.

10. In the present case at hand the plaintiff has clearly proved the giving and taking ceremony in his name as the same has been brought out during cross-examination and has also been corroborated by D.W. 1 & PW3.

11. Learned counsel for the defendant has also filed the citation in *2003 (I) OLR 295*, wherein it has been held that one, who takes the plea of adoption must prove the said fact by the factum of adoption for which he is displaced from the natural family and

impleaded into the family of his adopted parents. In *2009 (I) OLR 902*, it was held that adoption displaces the natural course of succession, onus lies on the person claiming adoption to prove the same.

The plaintiff has in this case corroborated his entire plaint, evidence in chief, in his cross-examination by proving the giving and taking ceremony. The factum of adoption has been clearly proved by him. In fact the witness of the defendants have also admitted to the signatures and have stated that they have signed on the documents thinking that they were loan documents. It was now up to the defendants to prove their claim. The plaintiff had clearly proved the signatures. In view of non proving of the reasons for signing on Ext. 2, it can be clearly said that the plaintiff has not only proved the giving and taking ceremony, but also has proved the execution of the adoption deed or from specifically the deed of acknowledgment of adoption. The defendant has filed citation in *AIR 2009 ORISSA 104, 77 (1994) CLT 503* underlining the principles of adoption. He has also filed the relevant provision of Sec. 13 of Hindu Adoption and Maintenance Act.

12. The plaintiff on the other hand has filed the citation in *2002 SC Jayasingh Vrs. Sakuntala*, wherein it has been held that “Presumption as to registered documents relating to adoption. Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved”. He has also filed a citation in *76 (1993) CLT – page 234, Prahallad Mishra and another Vrs. Benga Dibya and others*, where in it has been held that

“The requirement of Sec. 16 of the above Act are that there must be a document, it must be registered under law in force, it must purport to record an adoption which had taken place and the document be signed by both giver and taker of the child in adoption”. In *64 (1987) CLT, page 353, Basanta Kumar Praharaj Vrs. Smt. Jasoda Dibya @ Sahimani Dibya*, wherein it has been held that “Hindu Adoption and Maintenance Act, 1956-Sec. 16 Registered document executed by the person taking in adoption and the person giving in adoption - presumptive value. For a valid adoption giving and taking are essential. This can be presumed where a document signed by the person giving and the person taking discloses such adoption to have been made.”

In this case the plaintiff has clearly stated about the giving and taking ceremony. The burden of proof now lies on the defendants to negate the ceremony i.e the giving and taking ceremony, but also the signature of his adoptive father and sisters on Ext. 2. However, the defendants have not shown any document to negate the burden of proving from their side. Similar, view was also held in *77 (1994) CLT – page – 503, Debendranath Sahu Vrs. Amruti Sahu*, wherein it has been held that “Hindu Adoption and Maintenance Act, 1956- Sec. 16, statutory presumption for valid adoption – Registered deed.

Where the adoptive parents executed a document registered in favour of the adopted son and natural father of the child lent his signature among other persons it was held that the adoption need not be in present contemporaneous with the document which may be a previous adoption acknowledged under the document and presumption under Sec. 16.” In *48 (1979) CLT, page – 459*, it was held that the presumption of correctness of a registered document stands

proved until it is disproved. It was further held that where a duly registered document of adoption is indicated, the court shall presume that the adoption was in compliance with the provisions of this act unless and until it is disproved.

13. Undisputedly adoption disturbs the natural line of succession, a very heavy burden is placed under the propounder to prove the adoption. The onus lies on the person, who challenges the adoption. This aspect must be considered taking note of various other circumstances, i.e. evidence regarding the religious ceremony as the same is sine quo nan with the valid adoption. In the instant case the natural parents of the adoptive child had signed on the deed of adoption. The same was also scribed by P.W. 2, who admitted to the same and the natural father also admitted to giving his son in adoption. The adoptive father admitted to his sign on the document, though denying his signature on an adoption deed, but failing to prove as to why he has given his signature and similarly D.W. 3 also admitted his signature clearly shows that the deed of acknowledgment of adoption was perfectly done and there was a prior giving and taking ceremony. Hence in view of the above scenario it can be clearly said that the plaintiff has been able to prove that he is the adopted son of Sarbeswar Sundaray and his wife. The next question which now arises is as to why the name of the plaintiff is still in voter list of village Puinchhia, i.e. the village of his natural father. The defendant has clearly in his argument stated that the plaintiff Choudhury Deepak Patasahani has clearly admitted his natural parents name in every document. Hence as per Sec. 12 the adoption if any, has not been properly effected. The

defendant has filed in Ext. B & C, the voter list of village Puinchhia of the year 2014 & 2013, which shows that the plaintiff is of village Puinchhia and his fathers name is Madhusudan Routray. The defendants has clearly stated that these document with respect to the parenthood of the plaintiff clearly shows that he has never been adopted.

14. On careful scrutiny of the evidence, it is seen that the plaintiff has admitted that he came to know that his natural fathers name was reflected in the voter list, but he has not casted any vote in the said election. Further more he has also stated in para 23 & 24 that in the year 2009 he had left Gurujanga to prosecute a course at Hyderabad. Hence in my opinion the names of the plaintiff and his natural father in both Ext. B & C does not hold much ground. Further more those documents were not confronted to the plaintiff nor the natural father of the plaintiff in their cross-examination and hence their admissibility into evidence or more specifically its evidentiary value gets negated. Ext. B & C, does not show as to whether the plaintiff had casted his vote. If the plaintiff would have casted his vote then it could have created doubt with respect to non-fulfillment of Sec. 12 of Hindu Marriage and adoption Act. Hence the evidentiary value of Ext. B & C is next to none. Further more, although Ext. B & C are marked as Exhibit as those are public documents, but its contents have not been proved. It has been held in *AIR 2004 ORISSA 14 PARA – 13* “A document admissible in accordance with Sec. 35 of Indian evidence Act will automatically not be credible, simple because it has been admitted as evidence. A document admitted as evidence is to be

considered subject to relevancy and by assessing, but evidence is a will and not in isolation.” Hence in my opinion Ext. B & C does not hold much ground.

15. The plaintiff has also relied on Ext. 3, which is the deed of relinquishment. The said deed clearly shows that all the daughters of the adoptive father of the plaintiff had relinquished their share just after the execution of the acknowledgment of adoption deed. D.W. 2 in para – 10 and D.W. 3 have also admitted their signatures, but have denied that they have signed nothing that the same was a relinquishment document. The burden of proof was heavy upon the defendants to disprove the allegation of the plaintiff. But, the defendants have not adduced any oral or documentary evidence to corroborate as to what was the reason for them to sign on the deed of relinquishment. Although the question with regards to the legality of such relinquishment can be made, but that cannot negate that the parties had intention to adopt the plaintiff as the adoptive son of Sarbeswar and in that regard they had executed Ext. 2 & 3 containing the signatures of the daughters of Sarbeswar and the adoptive father. Hence in my opinion the plaintiff has clearly prove that he is the adoptive son of Sarbeswar Saundaray. Coming into the question of genuineness of the deed of relinquishment it is seen as earlier that the plaintiff has clearly proved that he is the adoptive son of Sarbeswar. Both D.W. 2 & 3 have admitted to their signatures on Ext. 3, which is the deed of relinquishment. Ext. 3 also clearly shows that all the daughters of the adoptive father of the plaintiff have signed on the said document. No evidence through oral or documentary has been brought to show the

reason for signing on those documents thinking it to be a loan document has been filed by the defendants. In such scenario the deed of relinquishment is found valid and proved. Furthermore even if it is admitted that the deed of relinquishment as void, the clear admission of execution of sale deeds in favour of the daughters point towards only an assumption that the defendant knew that the deed of relinquishment was genuinely done and valid, and thereby to negate the same this deed of relinquishment was done. No other explanation has been given by the defendants as to why the sale deeds were executed, i.e if the deed of relinquishment was void, then the daughters would automatically get their share and there was no need for sale.

**Issue Nos. v.**

16. The plaintiff has prayed to declare the sale deed executed by Sarbeswar in favour of all his daughters are sham and void as the same are his ancestral properties obtained through the family partition vide deed No. 817 dt. 22.02.1983. the said deed clearly shows that Sarbeswar Sundaray had through family partition has been in possession over the suit lands. Sarbeswar Sundaray, i.e. D.W. 2 has in his evidence admitted in para – 15 that as per registered deed of partition No. 817 dt. 22.02.1983, he had got into the possession of the lands in which he had executed the six deeds. As per the admission of the defendant witness No. 2, i.e. the adoptive father it is quite clear that all the said lands were joint family properties and hence the plaintiff has also a share upon the same. It is also quite clear that the lands in

Ext. 4 to Ext. 9 are more than the share of Sarbeswar. Hence all the same cannot be said to be a valid sale. The sale up to the share of Sarbeswar Sundaray can only be held to be valid. Hence the sale deed as a whole is void and inoperative. Further more it is quite clear from the above discussions, that the defendant had made the sale deed as he was sure about the deed of relinquishment. As the parties, i.e. Sarbeswar Sundaray and his daughters had made the deed of relinquishment, hence they had thought of selling the land to themselves as the only recourse to get back the said lands. Hence filing of the registered sale deeds and admission of the sale by the defendants clearly proves the deed of relinquishment.

17. Hence in my opinion the above sale deeds are void as the plaintiff has also a share in those properties and the sale up to the share of the plaintiff's adoptive father can be held as valid. But, in view of the way, in which the said transactions took place, it can be clearly said that the entire transaction of sale is void and inoperative upto the share of the plaintiff.

**Issue No. ii.**

18. The defendant has stated that the suit is not maintainable on the ground of wrong valuation filed by the plaintiff. The defendant has stated that the court fee has to be paid for setting aside the sale deed, but not in simple declaration. As the plaintiff has clearly stated that the sale is for more than lakh of rupees hence the valuation has not been correctly done. In *2010 (I) CLR (SC) 828*, it was held that where

the executant of a deed want it to be annulled he has to seek cancellation of the deed, but if an executant seeks for annulment of deed, he has to seek a declaration that a deed is invalid or non-est. No prayer for cancellation of sale deeds, prayer for declaration that the deeds do not bind, coparcenery and for joint possession by a person, who was not the executant of the sale deed, court fees was computable U/s – 7 (4) (c) of court fees Act .Thus accordingly in this case the suit is maintainable.

**Issue No. i.**

19. The plaintiff has clearly stated that the cause of action to file this suit arose on 08.12.2004, when the sale deeds and the deed of adoption was executed. The defendants have denied to the deed of adoption of sale deeds. Cause of action is a bundle of right asserted by one party and denied by another. In view of the rival contention of both the parties, it can be said that the plaintiff has got a cause of action to file this suit.

**Issue No. vi.**

20. As there has been no specific prayer made in this regard, hence ordered.

**ORDER**

The suit be and the same is decreed on contest, against the

defendants, but without cost. The plaintiff is declared as the only adopted son of defendant Nos. 1 & 2. The sale deeds executed in favour of defendant Nos. 3 to 5 are void and not binding on the plaintiff up to the extent of his share and the defendant Nos. 3 to 5 are permanently enjoined from not to interfere in the possession of the plaintiff in respect of the suit properties purportedly purchased vide the sale deed up to the share of the plaintiff.

Advocate's fees at uncontested scale.

**(ABHILASH SENAPATI)**  
**CIVIL JUDGE(JR.DIV), KHURDA.**

Transcribed to my dictation, corrected and signed by me and pronounced in the open court this the 9<sup>th</sup> day of September, 2014.

**(ABHILASH SENAPATI)**  
**CIVIL JUDGE(JR.DIV), KHURDA.**

**List of witnesses examined on behalf of Plaintiff :-**

P.W.1	Choudhury Deepak Patasahani.
P.W. 2	Kulamani Mangaraj.
P.W. 3	Kailash Chandra Singh.
P.W. 4	Krushna Chandra Sahoo.

**List of witnesses examined on behalf of Defendant no.1 :-**

D.W. 1	Madhusudan Routaray.
D.W. 2	Sarbeswar Sundaray.
D.W. 3	Swapna Rani Khatei.
D.W. 4	Kartik Chandra Mishra.

**List of documents proved on behalf of the Plaintiff :-**

Ext.1	Affidavit evidence of P.W. 1.
Ext. 1/1 & 1/3	Signature of P.W. 1 on Ext. 1.
Ext. 2	Regd. deed of acknowledgment of adoption bearing No. 69 dt. 08.12.2004.
Ext. 2/1	Signature of P.W. 2 on Ext. 2.
Ext. 2/2 to 2/18	Signatures of D.W. 2 on Ext. 2.
Ext. 2/19 to 2/26	Signatures of D.W. 3 on Ext. 2.
Ext. 3	Regd. deed of relinquishment bearing No. 2683 dt. 08.12.04.
Ext. 3/1	Signature of P.W. 2 on Ext. 3.
Ext. 3/2 to 3/9	Signatures of D.W. 3 on Ext. 3.
Ext. 4	Certified copy of RSD No. 69 dt. 06.02.2008.
Ext. 5	Certified copy of RSD No. 11141105424 dt. 01.10.2011.
Ext. 6	Certified copy of RSD No. 11141105425 dt. 01.10.2011.
Ext. 7	Certified copy of RSD No. 11141105426 dt. 01.10.2011.
Ext. 8	Certified copy of RSD No. 11141105427 dt. 01.10.2011.
Ext. 9	Certified copy of RSD No. 11141105428 dt. 01.10.2011.
Ext. 10	Certified copy of registered partition deed bearing

No. 817 dt. 22.02.1983.

Ext. 11	Affidavit evidence of P.W. 2.
Ext. 11/1	Signature of P.W. 2 on Ext. 11.
Ext. 12	Affidavit evidence of P.W. 3.
Ext. 12/1	Signature of P.W. 3 on Ext. 12.
Ext. 13	Affidavit evidence of P.W. 4.
Ext. 13/1	Signature of P.W. 4 on Ext. 13.

**List of documents proved on behalf of the Defendant :-**

Ext. A	Affidavit evidence of D.W. 1.
Ext. A/1 & A/2	Signature of D.W. 1 on Ext. A.
Ext. A1	Affidavit evidence of D.W. 2.
Ext. A1/1 to A1/2	Signatures of D.W. 2 on Ext. A1.
Ext. B1	Voter list of the year 2014 of Vill.- Puinchia.
Ext. C1	Voter list of the year 2013 of khordha municipality.

**(ABHILASH SENAPATI)  
CIVIL JUDGE(JR.DIV), KHURDA.**